

Exhibit A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 FEDERAL TRADE COMMISSION, et
4 al.,

Plaintiffs,

New York, N.Y.

5 v.

20 CV 706 (DLC)

6 VYERA PHARMACEUTICALS, LLC, et
7 al.,

8 Defendants.

9 -----x

Teleconference

10 September 22, 2020
11 4:00 p.m.

12 Before:

13 HON. DENISE COTE,

14 District Judge

15 APPEARANCES

16 MARKUS H. MEIER

17 Attorney for Plaintiff Federal Trade Commission

18 JEREMY KASHA

19 Assistant Attorney General for Plaintiff State of New York

20 MICHAEL BATTAGLIA

21 Assistant Attorney General for Plaintiff State of
22 California

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24 Assistant Attorney General for Plaintiff State of Illinois

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Assistant Attorney General for Plaintiff State of Ohio

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Assistant Attorney General for Plaintiff Commonwealth of
6 Pennsylvania

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Assistant Attorney General for Plaintiff Commonwealth of
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Attorneys for Defendants Phoenixus AG and Vyera
11 Pharmaceuticals LLC
BY: STEVEN REED

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Attorneys for Defendant Martin Shkreli
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14 KANG HAGGERTY AND FETBROYT LLC
Attorneys for Defendant Martin Shkreli
15 BY: EDWARD KANG
16 KANDIS KOVALSKY

17 KASOWITZ BENSON TORRES LLP
Attorneys for Defendant Kevin Mulleady
18 BY: KENNETH DAVID
NICHOLAS RENDINO

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1 THE COURT: Good afternoon, counsel. This is Judge
2 Cote speaking. I'll briefly take appearances.

3 For the FTC?

4 MR. MEIER: Good afternoon, your Honor. Markus Meier
5 on behalf of the FTC.

6 THE COURT: And for the State of New York?

7 MR. KASHA: Good afternoon, your Honor. Jeremy Kasha
8 on behalf of the State of New York.

9 THE COURT: For California?

10 MR. BATTAGLIA: Good afternoon, your Honor. Michael
11 Battaglia on behalf of the State of California.

12 THE COURT: For Illinois?

13 MR. SCHULTZ: Good afternoon. Richard Schultz on
14 behalf of the State of Illinois.

15 THE COURT: For North Carolina?

16 MR. STURGIS: Kip Sturgis for North Carolina.

17 THE COURT: For Ohio?

18 MS. MAAG: Good afternoon. This is Elizabeth Maag on
19 behalf of the State of Ohio.

20 THE COURT: For Virginia?

21 MS. OXENHAM ALLEN: Hi, your Honor. This is Sarah
22 Oxenham Allen for the Commonwealth of Virginia.

23 THE COURT: Is there any other counsel representing a
24 plaintiff?

25 MR. BETSKO: Joseph Betsko from the Commonwealth of

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1 Pennsylvania.

2 THE COURT: Would you spell your last name for the
3 reporter.

4 MR. BETSKO: B-E-T-S-K-O.

5 THE COURT: Thank you so much. And for the
6 defendants. Mr. Reed, is it Phoenixus?

7 MR. REED: Yes, it is. Steve Reed on behalf of the
8 two corporate defendants, Phoenixus and Vyera.

9 THE COURT: Thank you very much. And for Mr. Shkreli?

10 MR. CASEY: Good afternoon. Chris Casey from the
11 Duane Morris law firm on behalf of Mr. Shkreli. I also have
12 colleagues from the Kang Haggerty firm on the phone as well.

13 MS. KOVALSKY: This is Kandis Kovalsky and I'm here
14 with Edward Kang as well.

15 THE COURT: Thank you so much. And is there anyone
16 else representing Mr. Shkreli who wishes to put their
17 appearance on the record? Fine.

18 Mr. Mulleady?

19 MR. DAVID: This is Kenneth David from Kasowitz Benson
20 Torres, and on the phone is my colleague Nicholas Rendino.

21 THE COURT: Thank you so much, counsel, and thank you
22 for making yourselves available on such short notice. I feel
23 we've made some progress, though it might not feel like that to
24 you. I know it's been a lot of correspondence in the last two
25 weeks or so.

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1 Let me deal first with the sealing issues. Thank you
2 so much for identifying with brief statements why you believe
3 certain materials should be redacted or filed under seal.
4 That's of enormous assistance to me so that I can either
5 consider and accept or consider and reject your reason. So
6 you've simplified my work, and I thank you for that.

7 There is one more thing that I'd ask you to do if you
8 could. And that is, when you're filing your redacted letter or
9 other document on ECF, and providing me with an unredacted
10 version, please highlight if you could the redacted passages so
11 it's easy for me to find those without having to compare the
12 two documents, the unredacted with the filed redacted copy.
13 And the FTC has been doing that, but I'd ask counsel from Duane
14 Morris, please, if you could also make an effort to highlight
15 the passages that you've redacted in the publicly filed
16 document. Thank you so much.

17 MR. CASEY: Yes, your Honor. This is Chris Casey. We
18 apologize for that, and we'll certainly do that going forward.

19 THE COURT: Thank you. I appreciate it.

20 So let's get to the substance of the issue. As
21 counsel have acknowledged in your letters to me, I have not
22 ruled that any of the material in the FTC's or plaintiff's
23 possession that it received from the Bureau of Prisons pursuant
24 to a subpoena is in fact privileged. And I cited today in an
25 order of course the Second Circuit decision that counsel are

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1 familiar with indicating that this material is not privileged.

2 Nonetheless, I exercised my discretion to hold back
3 the plaintiffs from reviewing all of the material captured
4 pursuant to that subpoena served on the Bureau of Prisons. And
5 it has been of great assistance to me to review the document
6 that defendant Shkreli filed, I believe it is a September 14
7 document filed under seal that lists in that document eight
8 different categories of attorneys or groups of counsel for
9 which at that time identified matters on which those different
10 individuals and groups of lawyers were working.

11 As a result of that disclosure, the FTC on
12 September 17 revised its request and focused on two categories:
13 I, which lists Ms. Kovalsky, and the Kang Haggerty firm, with
14 respect to many different items of representation. I think
15 there are 23 listed in all. And then in the third category,
16 there is a representation by an attorney Scott Vernick as part
17 of the Fox Rothschild law firm's representation of Mr. Shkreli,
18 and in connection with that disclosure, there are 10 different
19 matters listed.

20 In its September 17 letter, FTC is explaining why it
21 believes these two categories are the two categories of
22 documents it wishes to see, and the defendant has responded on
23 September 18.

24 So, I don't have a resolution here, and therefore, I
25 wanted to talk with counsel. But here is my view, generally:

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1 None of this is privileged, and therefore, the FTC has the
2 right under the law to look at all of this. We're now down to
3 looking at two of the eight groups of materials, and it seems
4 to me that the burden should not be on the FTC to spend more
5 time trying to identify, you know, reasons for looking at
6 material it has a total right to review. So the burden is on
7 Mr. Shkreli if he feels there is any particular reason to hold
8 back the material captured within category I or category III,
9 and I want to give him an opportunity to make that showing to
10 me.

11 It's not going to be based on a privilege argument.
12 This material is not privileged. And it seems to me we're down
13 to generally talking about relevance and generally talking
14 about advice or communications that concern, in one way or
15 another, the events described in the complaint in this case.
16 And if there is material that is not connected to the events
17 described in the complaint, then I'm willing to consider a
18 showing by the defendant that that material should not be
19 reviewed by the FTC.

20 I have another concern here, and that is that we've
21 already spent several weeks -- and I know the parties have
22 spent several months -- talking about these issues. And I
23 think any showing has to be made to me fairly quickly, and I
24 don't know what volume of material is involved here, but with
25 respect to the first category, it seems that communications

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1 span several years and the volume could be high, and the task
2 of trying to pull out what the defendant believes should not be
3 reviewed by the FTC could be a very burdensome task.

4 So with those observations, Mr. Casey, do you want to
5 be heard?

6 MR. CASEY: Yes, your Honor. Thank you, if I may.
7 Your Honor, I would like, if the Court would permit me, to just
8 take a step back and to talk about the practicalities of
9 representing an inmate like Mr. Shkreli who is in federal
10 prison and the hurdles we've encountered. And the reason I
11 raise that, your Honor, is not to bypass the issues you've
12 raised, which I think we agree on the issues on the table. But
13 if we decide, if the Court decides that there are certain
14 matters that are certainly not relevant, our position on that
15 would be that they should not be in discovery, and there
16 shouldn't be any reason for the plaintiffs to have access to
17 those. That's the first part.

18 But the second part is for those items in discovery,
19 the communications that you have already said are not
20 connected, or are connected to the events in this case, it's
21 those communications that we are the most concerned about
22 because we effectively do not have representation of
23 Mr. Shkreli in the way that representing a client outside of
24 prison would have.

25 As all of the people on the call have at least on our

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1 side have experienced this. You have essentially unlimited
2 access to your client. In this case, your Honor, there are
3 three modes of communicating with Mr. Shkreli that are
4 unmonitored by the BOP, all of them are impractical. If I may
5 go through those for just a minute. I don't want to take a lot
6 of time.

7 You can do a prison visit. Well, since COVID-19 has
8 started, they stopped prison visits. So we've had no visits
9 with Mr. Shkreli. In fact, I've not met Mr. Shkreli. Prior to
10 COVID, there was a norovirus outbreak at Allenwood, which
11 stopped visits going back to January. That is just out. We
12 can't do that. Second is unmonitored phone calls. These are
13 calls that counsel can arrange with the prison in advance,
14 they're done on a very infrequent basis, and usually, always
15 you have to have a good reason for the call. And they're
16 limited in time. I've had 15-minute calls with him, I've had
17 30-minute calls, and you have a list of things you race through
18 and then you're done. You're done for a couple of weeks,
19 frankly, so it is just not effectively. The third is legal
20 mail. The old fashioned U.S. Postal Service mail. I think
21 everyone would agree, in a fast-paced litigation, that is
22 simply impractical.

23 What happens is inmates communicate with their
24 attorneys on TRULINCS. The attorneys try to limit the extent
25 they are revealing confidences and confidential subjects on the

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1 call. But as a practical matter, under Rule 1.4 of the model
2 rules of professional responsibility, we are obliged to get our
3 client's consent on matters that are pending. So, we feel a
4 heavy obligation to communicate with him.

5 So these are the obstacles we're up against, as is
6 every other counsel representing inmates in these prisons. And
7 that's why, since the *Mejia* case in 2011, there has been a
8 widespread outcry to change the BOP system. In fact, there is
9 a bill that's passed the Congress that will do just that. It
10 will make all these attorney-client communications privileged.

11 I respect the Court's ruling on that. I am not going
12 to go back to it. But I think it is important to understand
13 what practically is going on here. Because, particularly with
14 the COVID-19 pandemic, we effectively don't have access to
15 Mr. Shkreli as we would normally. So I think that's a very
16 important consideration for the Court. Because if we get to a
17 place where -- and I want to be practical about this -- where
18 we've narrowed it down to just those communications that are
19 connected to the events in this case, the plans and defenses,
20 those are the very communications that are protected by the
21 privilege. It is effectively eroded because of the reasons I
22 mentioned. I wanted to make that statement at the outset. And
23 I appreciate the Court's indulgence on that.

24 But I do agree that relevance is a key issue here.
25 And we have tried to push back, if you will, on plaintiffs on

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1 the relevance issue from the very beginning of this dispute way
2 back in June. When we saw in the production 20,700
3 communications that Mr. Shkreli has made from prison, not only
4 with his attorney, but with his family and friends and e-mails
5 of a personal nature, that clearly to us didn't seem relevant
6 and didn't belong in the case.

7 We've tried to engage with the plaintiffs on that for
8 a long time, and I agree we have made progress. I do
9 appreciate the Court's assistance in that regard.

10 But I would say this: The plaintiffs have conceded
11 that there are various matters that other attorneys, other than
12 Ms. Kovalsky and Mr. Vernick, have worked on that are simply
13 not relevant to this case, and I agree with that of course. I
14 also think similarly they should agree and concede that many of
15 the matters on which Kang Haggerty was engaged with Mr. Shkreli
16 are simply not relevant, and I'm happy to provide more detail
17 on that.

18 I would say generally, your Honor, items 1 and 2 of
19 category I would be the category that may potentially have
20 relevant communications. And just another point the Court
21 should understand. We, the Duane Morris firm and Kang Haggerty
22 got involved in late December of 2019. Prior to that time, he
23 had no awareness that he was even a subject of this
24 investigation. And we frankly scrambled to get together a
25 presentation to the commission in January. And then the

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1 complaint was filed in late January.

2 The communications they're asking for go to
3 February 12. That's the communications they've asked for to
4 date. Those are the very communications about when we were
5 just getting engaged in the case. I would venture to guess,
6 your Honor, there are e-mail communications in that production
7 that would relate to the matters, that relate to the client and
8 defense, so we're concerned about the disclosure of those.

9 We're also concerned about ongoing sort of realtime
10 disclosures to our adversary, as I think you can appreciate.

11 But just getting back to that. The first two matters
12 are ones we would say may potentially have relevant
13 communications, but I would say it would be limited in the
14 sense that some of it is not relevant. But then if you go to
15 number 3 through 15, and then 18 to 23, all of those are
16 irrelevant and do not deal with matters that would be connected
17 to the events in this case.

18 I just pause for just a minute on item 16 and 17.
19 These are the items they've asked for in their letter. 16 is
20 direction and preparation of trust agreement for Mr. Shkreli.
21 On that item, plaintiffs have asked for communications relating
22 to that because they believed or had a theory that Mr. Shkreli
23 may have been setting up a trust to hide assets to prevent the
24 plaintiffs from getting access to his assets. They made that
25 representation in the letter to the Court. As we explain in

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1 our reply letter, that's not the case at all. It was a voting
2 trust agreement that he was negotiating with Vyera on. It had
3 nothing to do with this case. So those communications would
4 not be relevant.

5 Number 17, providing legal advice and shareholder
6 rights to Mr. Shkreli. Again in our letter we explained that a
7 dispute arose regarding indemnification of fees. There was
8 some discussion about Mr. Powers' role in that, and that's
9 where that advice came in. I would say some of that may be
10 relevant. I don't know, frankly. But, this is just the kind
11 of advice that lawyers perform all the time for clients.

12 It is not, as plaintiffs have claimed, business
13 advice. Ms. Kovalsky is a lawyer. She's not a business
14 advisor. She advises on the law. And that argument that they
15 made I think was rebutted effectively and shouldn't be
16 considered any longer to the Court.

17 If they're after business communications as to
18 Mr. Vernick's communications, I will be candid with the Court
19 and tell the Court that I'm not as familiar with Mr. Vernick's
20 representation of Mr. Shkreli. I'm happy to get more
21 information about that. But looking at some of the matters,
22 just looking at the case caption, it appears that many of those
23 are just litigations that have nothing to do with this case.

24 I'd also say, your Honor, there are a number of
25 attorneys here, Mr. Brafman's law firm and others, that have

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1 matters that the plaintiffs have said they are not interested
2 in. Some of those overlap with the matters listed in item 1.
3 So, they waived that. They can't go back now and try to get
4 Ms. Kovalsky's communications relating to those matters that
5 they say they are not interested in.

6 So that's our position on the relevance, your Honor.
7 I don't think they've made their case that they are entitled.
8 And in terms of the *Mejia* case, we understand that the Court
9 has ruled on that. I would just say that the case was in 2011,
10 there have been developments in this, again, getting back to
11 the practicality of this, in this area that has made that case
12 difficult to apply, particularly in the face of the pandemic.
13 I'd ask the Court to consider that.

14 THE COURT: Well, Mr. Casey, I'm quite familiar with
15 the difficulties that the pandemic has posed to incarcerated
16 defendants. It is a big part of my docket, as it is as every
17 federal judge's docket. And of course, the FTC is not seeking
18 the communications from your law firm who is representing the
19 defendant in this lawsuit. And if we had a carve-out from
20 March 2020 forward, of course, that would take into account the
21 impact of the pandemic on the prison system and prisoners in
22 the system.

23 There may be other issues with respect to the
24 individual facility in which the defendant was incarcerated in
25 the period before March of this year. But, the pandemic issue

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1 and the impact that it's had on the ability of inmates to
2 communicate effectively with counsel is really cabined in time.

3 So, before I hear from counsel for the FTC, Mr. Casey,
4 I don't know what the volume is of the communications with
5 Ms. Kovalsky and Mr. Vernick in were in categories I and III on
6 the chart. Do you have any idea?

7 MR. CASEY: The volume, your Honor?

8 THE COURT: Yes.

9 MR. CASEY: I do not, your Honor. I can check on that
10 and get back to the Court, unless one of my colleagues from
11 Kang Haggerty is more familiar with that.

12 THE COURT: Okay. Let me hear from --

13 MR. CASEY: Your Honor, if I may, just I apologize for
14 interrupting but just briefly. You mentioned that they are not
15 seeking e-mails from the Duane Morris law firm. In fact there
16 are no such e-mails. We have not been on the TRULINCS system.
17 I can tell you it's difficult to get on the system, and we've
18 been trying. But, I just wanted to make that point for the
19 record. Thank you.

20 THE COURT: Okay. You are listed as category 7. That
21 is the law firm.

22 MR. CASEY: There should be a note that we have not
23 had any communications to date. If you look at footnote 11,
24 your Honor, page 7.

25 THE COURT: Yes. Okay.

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1 MR. CASEY: Thank you.

2 THE COURT: Let me give the FTC a chance to respond.

3 MR. MEIER: Thank you, your Honor. Markus Meier on
4 behalf of the FTC.

5 I'd like to start just by setting just a little bit of
6 context and then I'll get right to the heart of the issue. As
7 your Honor has heard from the defendant throughout this
8 litigation, the FTC did a multiyear pre-complaint
9 investigation, and the vast, vast majority of the Bureau of
10 Prisons materials that we collected were collected
11 pre-complaint, before we ever even filed the complaint.

12 So with respect to Mr. Casey's hardship argument, I
13 think, frankly, and I hesitate to say this, but I think they
14 are a little bit of a red herring, and here's why. The FTC
15 committed at the outset of these issues with Mr. Casey, and we
16 did this in writing, we did it numerous times, that we would
17 not seek any Bureau of Prisons materials going forward, and
18 that was in recognition of COVID issues. But all of the
19 materials we collected are pre-March 2020, thus pre-COVID.

20 And I note, and it was interesting, despite all of the
21 back and forth we've had to date, Mr. Shkreli's counsel have
22 not made any showing of any type of particularized hardship in
23 the pre-COVID period of communicating with his lawyers, and in
24 fact, Mr. Casey's on record right now saying that the Duane
25 Morris firm apparently hasn't been prohibited from having

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1 confidential communications since the pre-COVID period. So,
2 that's a starting point for us.

3 But, let me talk a little bit about the relevance
4 issue. Because Mr. Casey has spent a lot of time talking to us
5 about that, and he's raised it in some of the briefing before
6 your Honor. Again, the issue for us was the FTC conducted a
7 pre-complaint investigation, and of course, government
8 investigations aren't governed by the federal rules of evidence
9 or federal rules of civil procedure and the scope is broader.
10 In FTC cases it is determined by the commission's process
11 resolution that attaches to all subpoenas that are sent,
12 investigative subpoenas and investigative demands. So, and
13 that makes sense because at that point we're trying to figure
14 out whether the law's been violated, if so, which laws, and if
15 so, who was involved. And if so, what to do about it.

16 But even under the federal rules of civil procedure,
17 discovery is broader than this narrow concept of relevance that
18 I've heard Mr. Casey make reference to numerous times in our
19 conversations, and I think that's what he's talking about with
20 your Honor, too. A sort of a relevance standard that we
21 wouldn't expect to have discussions about until we get to the
22 point where we're preparing exhibit lists and making excerpts
23 of depositions and the kinds of things that are done pretrial,
24 but of course discovery is broader than that.

25 And moreover, as your Honor is very familiar, parties

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1 and third parties often produce materials in response to
2 discovery requests that aren't "relevant" in some narrow
3 evidentiary sense. It happens all the time. And we'll deal
4 with the relevance issues -- in our view we should deal with
5 the relevance issues at the relevant time, which is pretrial.

6 What we have shown, your Honor, and what we believe to
7 be the case, is that there are communications in those
8 materials that clearly talk about business matters, and some of
9 them do involve communications with attorneys. And we've
10 specifically limited ourselves at this point to those involving
11 Ms. Kovalsky and Mr. Vernick.

12 I understand Mr. Casey is not that familiar with some
13 of the materials with Mr. Vernick, but just to give a little
14 bit of background about him. He was a lawyer that was
15 originally hired by Mr. Shkreli for business matters. He later
16 became effectively Vyera's corporate counsel, essentially their
17 general counsel, the outside lawyer before the corporate
18 entities got a general counsel. He was involved in Vyera's
19 business decision-making activity, including much of the
20 conduct that was alleged in the complaint. And that's why
21 we're looking for materials from him. Ms. Kovalsky, as best we
22 can tell, has also been involved in business discussions and
23 decisions. And sometimes, we know from e-mails that we have
24 seen that we have been able to look at, that Mr. Shkreli
25 sometimes uses lawyers as conduits and as a connection back to

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1 the non-prison world, to have discussions about business
2 matters and to continue to have discussions on his behalf, sort
3 of his messengers, if you will, or go-betweens on business
4 issues.

5 So, I think within the spirit of what the federal
6 rules of civil procedure require for this conduct that's
7 relevant in discovery, that there are likely to be many
8 relevant documents within those materials. What ultimately
9 becomes relevant for purposes of trial might be something much
10 narrower. It always is. But at this point we don't think we
11 should be hamstrung by the defendant's choices as to what is
12 and isn't relevant to us.

13 That's all I have to say, your Honor. Thank you.

14 THE COURT: Okay. Mr. Meier, do you have a sense of
15 the volume of material in categories I and III of the
16 communications with Ms. Kovalsky and Mr. Vernick?

17 MR. MEIER: Your Honor, I do not. But I do, I know a
18 couple of my colleagues are on the line who did not make a
19 notice of appearance, and one in particular, I can call on him
20 right now and see if he happens to know that because he is very
21 close to these issues, if your Honor would like.

22 THE COURT: Certainly.

23 MR. MEIER: Okay. Neil Perlman.

24 Mr. Perlman, do you happen to know roughly what the
25 volume of those materials are?

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1 MR. PERLMAN: Good afternoon, your Honor. This is
2 Neil Perlman. We don't have an exact count, because as your
3 Honor knows, we've redacted a number of these materials in
4 response to the August 20 order. But, I believe these
5 redactions span a large number of files across I believe 28
6 different sets of e-mail exchanges. And each one of those
7 documents does not just contain one e-mail, but instead it
8 contains a large number of chains. So while we aren't able to
9 give you an exact number, we know it is a large volume, and
10 moreover, we don't really have an ability to sort of segregate
11 by subject matter or the topic of representation by the
12 counsel. They're all in one document, as it were.

13 THE COURT: So you can sort -- if I understand this
14 correctly -- by recipient or sender, so you're able to identify
15 those communications that would be between Mr. Shkreli and
16 Ms. Kovalsky and Mr. Vernick. Am I right?

17 MR. PERLMAN: Your Honor, we're able to figure out
18 which e-mails were between Mr. Shkreli and Ms. Kovalsky or
19 Mr. Shkreli and Mr. Vernick. We aren't able to sort in the way
20 that one often thinks of in terms of using metadata, because
21 these documents were produced to us by the Bureau of Prisons in
22 PDF form. So we have to manually search each one of them for
23 the relevant recipients or senders.

24 THE COURT: Thank you. So, I know counsel are busy
25 working on a variety of issues concerning this litigation. But

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1 I'm going to ask you, Mr. Meier and Mr. Casey, to have one more
2 conversation today or tomorrow, if possible. What I'm
3 envisioning is an agreement that would allow the FTC to review
4 the materials captured by items I and III, unless the defendant
5 was able to identify a particular reason that that review
6 should not take place, and the timetable to permit the
7 defendants an opportunity to identify specific communications
8 that would fall within that category.

9 So, it's not a privilege log, and of course I don't
10 want to mislead anyone by suggesting that I'm using the term
11 "relevance" in a way that would be the 401 standard under the
12 federal rules of evidence. And I need a discussion from you
13 about timetable. And if you're not able to reach an agreement
14 on the method that would give Mr. Shkreli one last opportunity
15 to sort of hold back particular items from categories I and
16 III, which it believes are either totally irrelevant from his
17 point of view and/or prejudicial for FTC to review, and I'll
18 just have to think about this further myself, and decide
19 whether wholesale review of those categories of documents
20 should go forward.

21 Obviously you can talk about a date cutoff. It sounds
22 like there isn't anything captured in these categories from the
23 COVID era. But it sounds like there won't be any difficulty in
24 agreeing that there should be a cutoff date so that COVID-era
25 communications are off limits.

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1 Before we end this conversation, Mr. Casey, did you
2 have any comment or question?

3 MR. CASEY: Well, just, your Honor, briefly on that
4 note on the COVID issue. Some of these communications are from
5 January and February up to March 12. When you use that term
6 COVID era, do you have a sense of any particular date, because
7 I know there are communications that predate March 12.

8 THE COURT: I don't have at my fingertips the date in
9 which the Bureau of Prisons essentially shut down operations.
10 I believe it was in March, but that date is knowable.

11 MR. CASEY: Okay. Thank you for that. Your Honor,
12 the other thing I was going to mention as a potential way to
13 cut through this, plaintiffs have offered, or the plaintiffs
14 have said in their letters that what they're really interested
15 in is items 16 and 17. And those are items that we would be
16 willing to provide those documents to them. As said, and I
17 don't think they are relevant, but if they want them, I think
18 we're willing to let them have them. And as I said before, I
19 do think that with the exception of numbers 1 and 2, all of the
20 others are simply not relevant. That's just something that I
21 would propose as a compromise.

22 THE COURT: I appreciate you thinking along those
23 lines, and I'll let you discuss that with the FTC.

24 Mr. Meier, is there any comment or question you had
25 before we end this call?

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1 MR. MEIER: Yes, your Honor. Thank you. I was trying
2 to write down your Honor's general instructions. And one
3 statement your Honor made caught my attention, because I could
4 see how this could become a difficulty when we have these
5 discussions with Mr. Casey and his colleagues.

6 Your Honor talked about something being totally
7 irrelevant or prejudicial, and did your Honor mean unfairly
8 prejudicial as opposed to simply prejudicial? Because clearly,
9 anything in those documents that might be useful to the FTC
10 will be prejudicial to Mr. Shkreli. But I am assuming the
11 Court meant unfairly prejudicial in the rule of evidence sense,
12 and not just merely prejudicial.

13 THE COURT: Yes. Not probative of liability but
14 something so personal or confidential that it is unrelated to
15 this case. Really, I don't think the distinction is unfair
16 prejudice, because things that can be unfairly prejudicial for
17 a jury would be highly relevant in terms of the discovery
18 process. So I think we're not talking in that category at all.
19 But certainly anything that involves Mr. Shkreli's health or
20 family issues or personal issues unrelated to his business, I
21 don't think the FTC is asking to see any of that or needs to
22 see any of that. So I'll let counsel have further discussions
23 and hope to hear from you tomorrow or the next day at the
24 latest, and hope that you are able to find a way forward here.
25 Thank you so much.

K9M3FTCC

1 MR. CASEY: Thank you, your Honor.

2 MR. MEIER: Thank you, your Honor.

3 (Adjourned)

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